The

REPORTER

For Conscience Sake

Volume VII, No. 4 **February, 1950**

Draft Suspense Continues

Congress has so far not acted on the request of President Truman and Defense Secretary Louis Johnson to extend the draft to June, 1953. The present law expires on June 24.

Johnson asked that the draft simply be extended three years without any other changes in the present law.

Carl Vinson (D. Ga.), chairman of the House Armed Services Committee, indicated that the draft will not be extended in its present form. He has suggested legislation enabling Selective Service to register and classify but without authority to call up inductions. A new law would be required before registrants could be inducted.

The Army hopes for a "compromise" which will give the President authority, as he now has, to call up inductions.

With renewal of the draft still in doubt, objectors whose claims have not been determined by the exemption board or appeal board should act on the assumption that it will be renewed and work to get their proper classification. While some won't regard the draft's extension as the most pleasant possibility, it is best, when in doubt, to err on the side of caution and assume that the unpleasant may happen.

The other possibility—that the draft may die—is more reason for an objector to get his proper classification. If the draft dies while he is still mis-classified the record will stand as a denial of his claim. Then, if he claims conscientious objection in some future draft, the denial now will be a barrier.

If he is in doubt as to his next step he should write to the NSB, explain fully his problem, and ask for help.

THE DAMASCUS ROAD IS RESTRICTED

CHURCH GROUP PROTESTS

The Disciples of Christ at their October convention in Cincinnati, passed a resolution in support of religious claimants who are not permitted to appeal when the local board refuses to pass on their claim.

The resolution read, in part, as follows:

WHEREAS: Young men are being refused examinations* of their claims to exemption by local draft boards and Selective Service.

THEREFORE, BE IT RESOLVED:

1. That the International Convention of Disciples of Christ protests the violation of the rights of these persons as guaranteed by law.

There were also resolutions passed concerning Larry Gara, the World War II non-registrant who was convicted for counselling non-registration under the present exemption act, and a resolution advocating the repeal of the 1948 Selective Service Act.

(*This does not mean that local boards have refused to read the claims, but having read, they refuse to determine them.)

"Religious belief, however, is more important than 'training' because we are too prone to have the schoolmaster in mind and hours, days, weeks, years of study when we weigh the meaning of training. Even there, one gets it by the long processes—another by 'cramming'. Does he get it? That's the question. If so, it involves training of some kind.

"I have some doubt about absorption through 'bolts from the blue' even though I do not toss aside entirely St. Paul's experience on the Road to Damascus. Those are the exception and probably he had a lifetime of training crammed into that one hour."

General Lewis B. Hershey
March 9, 1942

Because of cases in which Selective Service refused to permit the appeal of claimants who asked for the Special Form for Conscientious Objectors for the first time after they had been in I-A for a little while, NSB has asked Selective Service to define the latest date at which a registrant might file his CO claim and still be certain that he can have an appeal as a matter of right.

Selective Service seems reluctant to commit itself at present. The best authority indicates that the appeal will in some cases be a matter of right, of which the registrant can be certain, up until ten days after he is placed either in I-A or I-A-O. After that, his appeal will be a right only if the local board consents to send a new Notice of Classification; but if it chooses not to send a new Notice, then the appeal will be only a privilege.

During the period after the ten days are up, in which the appeal is discretionary, Selective Service indicates that the local board will not be required to change its course unless its refusal is arbitrary, or unless no reasonable person could have come to that result. Where there is doubt, therefore, the benefit will be given to the board.

However, even this much is uncertain, and it is possible that any religious claimant who failed to sign Series XIV on the Classification Questionnaire (SSS Form 100), requesting the Special Form for COs, might encounter difficulty.

Therefore, it is important to have religious claimants assert their views at the earliest possible date. Even if one already has doubts as to how his claim will be received because of the time of filing, now is better than a month or a week or a day from now.

The group most seriously affected by this attitude of Selective Service's are those who become certain of their objections after they have already been classified. These will not be great in number.

The way in which the group is affected is that they will be unable to obtain a Department of Justice hearing of their claims if appeal is not allowed. The Department of Justice hearing has been of great value in assuring objectors that local neighborhood biases will not be the determining factor in their cases.

Western Germany Exempts COs

The new Constitution now in effect in the Western Zones of Germany guarantees conscientious objectors exemption from combatant military service.

Article 4 (3) of the constitution, called the Basic Law for the Federal Republic of Germany, reads, "No one may be compelled against his conscience to perform military service as an armed combatant. Details shall be regulated by a federal law."

To date no law regulating the "details" has been enacted so that it is not known how conscience will be defined or how persons opposed to combatant service will be recognized.

The Basic Law was adopted at Bonn last year and is popularly known as the Bonn Constitution. It was adopted by a Parliamentary Council of 65 German political leaders meet-

(Continued on page 3)

WHAT WOULD YOU DO?

A local board denies a claim of conscientious objection. The obector sends his board within ten days a written request for an appeal. The board tells him he can't appeal until he has his armed forces physical examination, and that that will not happen until inductions are resumed. What would you do?

Suppose the board tries to persuade the obector to withdraw his request for an appeal and wait to see whether or not he passes the armed forces physical exam. What would you do?

ANSWER ON PAGE 3

COs SEEK ANTI-DRAFT VACCINE

AN informal meeting attended by several Consultative Council members of NSB was held on Monday, February 6, in Washington to "discuss the general problem of relationship of conscientious objectors to the present draft Act and the proposal to extend the Act."

The meeting was called in advance of the full Consultative Council meeting scheduled for March 14 in order to hear any proposed changes in objector provisions which objector groups might offer. The House Armed Services Committee gave consideration earlier than had been anticipated to the bill extending the draft. Scheduled hearings ended February 2.

Attending the meeting were Ernest Kurkjian, Philadelphia, *American Friends Service Committee*; H. J. Collins, Chincoteague, Virginia, J. W. Farr, Frankford, Delaware, and F. L. Robuck, W. Columbia, South Carolina, all of the *Christ Sanctified Holy Church;* Estel E. Perry, Washington, D. C., *Church of God*; Benno Habenicht, Yoakum, Texas, and James Rother, Schulenburg, Texas, *First Divine Association in America, Inc.*; Donald E. Haynes, Alexandria, Virginia, *Seventh-day Adventists;* Ed Crill, New Windsor, Maryland, Ora Huston and W. Harold Row, Elgin, Illinois, *Brethren Service Commission*; Ernest Lehman and William T. Snyder, Akron, Pennsylvania, *Mennonite Central Committee.* A. Stauffer Curry, NSB Executive Secretary and Paul Goering, Associate Secretary, were also present.

While the calling of this meeting represented no crisis in the work being handled by NSB it did provide an opportunity for any members to discuss proposed changes in the present objector provision. No recommendations or resolutions were passed by the group.

Federal Council Dept. Affiliates With NSB

THE Executive Committee of the Federal Council of the Churches of Christ in America authorized, on December 6, 1949, its Department of International Justice and Goodwill "to establish a consultative relationship with the National Service Board for Religious Objectors. This action is taken with the understanding that the National Service Board for Religious Objectors is primarily a service agency and is in no sense a policy-making or propaganda body."

The Catholic Worker has requested that its name not be listed with Consultative Council members. This follows the consent announced in the September 30, 1949, *Reporter* to so list its name. The reason for the change appears to be nothing that has occurred, but a feeling that the original decision was unwise. The Catholic Association for Conscientious Objectors is not the same as the Catholic Worker and was not involved in the two moves.

AMONG the questions discussed by the representatives who came to the February 6 meeting of the Consultative Council was the possibility of obtaining "absolute exemption" for conscientious objectors under the Selective Service Act. By the phrase "absolute exemption", most conscientious objectors probably mean exemption from registration in addition to the existing exemption from combatant service.

Exemption from registration would be difficult to apply to conscientious objectors.

There are two groups of men between 18 and 26 who are either exempt from registration or not within the jurisdiction of Selective Service under the present Act.

The first group consists largely of present members of the Armed Forces. If one of them should not register and were erroneously arrested for evading registration, would only take a matter of hours, or at the most a couple of days, to ascertain positively whether or not he were a member of the armed forces and so were excused from registration. The exemption is not likely to give rise to any difficulty in enforcing the law.

The second group, which is not subject to the jurisdiction of Selective Service, consists of *non-resident* aliens; only aliens *resident* in the United States are required to register. In cases other than Selective Service cases, the question of whether an alien is a resident of the United States or not depends on where he *intends* his home to be, or in other words, on his *state of mind.*

Obviously, if an alien were arrested for failing to register, the question of whether he were required to or not could not be settled in hours or even days if it turned on the more elusive question of where he *intends* his home to be. It might require a jury trial to determine his intent.

To avoid this difficulty Selective Service has provided the non-resident aliens must obtain a document from either the Department of State or the Immigration and Naturalization Service which identifies them as non-residents.

Thus the non-resident alien can only secure his freedom from the jurisdiction of Selective Service by a procedure somewhat more difficult than registration.

It is possible, that, if conscientious objectors were exempted from registration, they, too, would be required to secure a document like the non-resident alien's, since the matter of who is conscientious is also a question of intent and difficult to know without some official determination of the question. The answer is not visible to the whole world, as the answer to whether a man is a member of the armed forces usually is.

Therefore, exemption from registration for conscientious objectors would require some red tape.

It would not, however, require as much red tape as the present procedure of prosecuting all of them.

SOME REGISTRANTS WHO ARE MERELY EXEMPT GET ASSIGNED, AND THE DEFERRED ARE AS IMMUNE AS THE ABSOLUTELY EXEMPT

THE Consultative Council representatives at the February meeting also heard a report analyzing the present status of the conscientious objectors.

The Selective Service Act of 1948, Section 6 (j), reads, "Any person *claiming exemption from combatant training* and service because of such conscientious objections *whose claim is sustained* by the local board shall, if he is inducted into the armed forces under this title, *be assigned* to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, *be deferred.*" (Italics supplied)

This sentence shows that all conscientious objectors, whether they are I-A-O or IV-E, must claim and receive an *exemption* before they are so classified. After they have been exempted, the I-A-Os are *assigned*, while the IV-Es are *deferred.*

Therefore, the IV-Es have *both* an exemption from combatant service plus a deferment.

It has sometimes been erroneously said that an exemption is a right, but a deferment is merely a privilege. Both are really rights, however, so long as the Selective Service Act grants them. Selective Service could not change either one, and an Act of Congress would be required to change either.

Therefore, the common notion among COs that there is some benefit in changing the word *deferred to exempt* is without foundation. This deferment cannot be abolished until Congress itself does it; an exemption can be abolished by Congress as easily as a deferment when Congress is ready to do it. Only a judicial decision that COs have a Constitutional right to deferment, or an amendment to the Constitution to that effect, would be in some measure proof against future Congressional action.

In Section 6 (j) the word *exempt* probably refers to the difference between one active classification and another. Thus IV-E, I-A-O, and I-A were all active under the 1940 Selective Service and Training Act, and so were all exempt, one from the other. The word *deferred* probably refers to the difference between an active and an inactive classification, since it is used in contradistinction to the word *assigned.* The frame of mind of the Congress under the present Act is that the CO will be classified in an inactive class (since he is deferred) but if he were ever called to active service it would be of a civilian variety (since he is also exempt).

JEHOVAH'S WITNESSES REQUEST IV-E

JEHOVAH'S witnesses are claiming both a conscientious objector's deferment and a ministerial classification under the present Selective Service Act.

During the war many Jehovah's witnesses went to prison because they refused to accept the conscientious objector's classification, and Selective Service refused to grant the ministerial classification. Most of the witnesses were therefore ordered to report for induction and refused to obey the order.

The Selective Service Act of 1948 clarifies Congressional intention in granting a special status to ministers by defining the term.

While, according to the doctrine of some groups, all believers are priests or have the divine authority to administer sacraments, Congress has exercised its prerogative of using the term *ministers* in a different sense. Oftentimes words used in legislation will not have the meaning given them in some special, private usage, when the legislature intends a meaning of its own. Therefore theological definitions of "minister", like theological definitions of "Supreme Being" (see the December 1950, *Reporter*, p. 4), have only a limited bearing on construing legislation, where Congressional intent is determining.

Section 16 (g) (2) of the Act reads as follows:

"(3) The term 'regular or duly ordained minister of religion' does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect or organization and does not include any person who may have been duly ordained a ministe rin accordance with the ceremonial, rite, or discipline of a church, religious sect, or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer in accordance with public worship as embodied in the creed or principles of his church, sect or organization."

This definition indicates that "minister" as used in the Selective Service Act is limited to those people whose only occupation is ministerial, or whose primary occupation is ministerial if they have more than one. The term refers as much to the amount of time spent by the individual as a minister as it does to the authorization given him by his church.

It is perhaps due to this clarification that witnesses now claim the conscientious objector's deferment in addition to the ministerial classification.

The witnesses report that denial of claims for exemption or deferment have been numerous; although compared with the last draft law they are somewhat fewer.

Because inductions have been suspended, we only know of one case of a witness that reached the stage of prosecution under the present law. The witness, however, was reclassified by his board before the case came to a close, so that he was never convicted.

Boards Report Mounting IV-E Total

AT THE New Year the total number of people with IV-E classifications in the United States and territories was 8,739. The number who had been in IV-E, but who had become over-age, was probably 1,347 according to the method of estimating explained on page 4 of the November 1949, *Reporter*.

This makes the total number of people who have been in IV-E at one time or another, since the beginning of the draft 10,086.

Several states have shown extreme monthly rises in the number of IV-Es, totalling 1,180, followed later by equally great falls. This has been explained as clerical errors later corrected. If these figures had really represented people placed in IV-E and later taken out, the total who have had IV-E would be 11,204.

The total increase in the number of COs between September 30, 1949, and December 30, 1949, was at least 509, although exemption boards have not been meeting so frequently and inductions have been stopped.

Some interesting comparisons to make are the total of 15 IV-Es in Massachusetts, compared to the 329 in Virginia, and the total of 9 IV-Es in Maine, compared to the 373 in Mississippi. All of New England has 43 IV-Es, while Texas, the state that prides itself on its fighting men, has 92. Tennessee has 102 and North Carolina has 117.

It is difficult to compare these figures with those under the 1940 Act, since Jehovah's witnesses now claim conscientious objector's deferment, the age span of registrants under the 1940 Act was greater, and objectors under the 1940 Act were only put in IV-E after all deferments had been exhausted.

TWICE-TOLD TALES

Selective Service has returned to the use of civilians on a nationwide basis for registering boys who turn 18.

The November REPORTER carried the story of how army recruiters were being used in many of the states in order to economize. Gen. Hershey has decided, however, that it creates the wrong kind of public impression for a civilian agency to use army recruiting officers. Many of the boys turning 18 will get their first impression of Selective Service from the registrar, and if that person is an army recruiting officer, then an erroneous impression of Selective Service would be created.

However, the civilian registrars still occupy offices jointly with army recruiting personnel in many places, in order to economize.

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The Supreme Court refused to grant certiorai to D. Wirt Warren, the Kansas Unitarian who offered his step-son funds to go to Canada or Mexico and avoid registration, under the 1948 exemption Act. Dr. Warren's conviction was affirmed by the United States Court of Appeals for the Tenth Circuit on October 31, 1949, although the step-son, Walter Dean Murrah, had in fact registered.

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Eleanor Roosevelt in her book "This I Remember" has denied that her youngest son, John, was a conscientious objector.

It may be surprising to some of our readers that she even found it necessary to deny the story. The story reached the press during the war when a member of the House of Representatives made suggestions that the President had conscientious objectors in his family; and then the Representative returned home to find out that his own son had requested a I-A-O classification.

Mrs. Roosevelt says that in the years before the war John was not an eager-beaver; but once war was declared, he knew what he had to do. He went into the Navy.

WHAT WOULD YOU DO?

ANSWER TO PROBLEM ON PAGE 1

In the first case the board is misinformed. That was the rule during inductions, but after inductions were postponed in January, 1949, Selective Service instructed local boards to forward appeals without the exam. The objector is right and is protected by his written request. If the board delays forwarding the appeal, he should write to the State Director.

In the second case the objector is ill-advised. To withdraw his appeal would be a serious mistake. He would have no right of appeal after the examination. If he passed the exam and received an induction order, he would have to violate the law to avoid induction. In the first case he is protected by his written request but in the second one he has no protection if he withdraws his appeal.

NSB GATHERS PRISON DATA

NSB, in checking on how those imprisoned under the 1940 Selective Service and Training Act were faring under the present Act, discovered that the recorded data on former prisoners was not adequate or uniform in respect to showing a permanent mailing address or showing the birth dates of those imprisoned.

Since the number of violators of the present Act is smaller, circumstances are more favorable to collecting a uniform data. NSB is attempting such a list, including the desirable information.

GERMANY (from page 1)

ing from September 1948 to May 1949 and will be in force until a constitution adopted in a free decision by the German people comes into effect.

There is no precedent for the recognition of conscientious objection in either the Weimar Constitution adopted after World War I or in other recent German law. This is a post-World War II development which was apparently inspired by F. Sigmund-Schultze and his associates in the Versohnungsbund (the German FOR).

Supreme Court Reverses Cohnstaedt Case

The Supreme Court of the United States has reversed the case of *Cohnstaedt v. Immigration and Naturalization Service.*

The Kansas Supreme Court in that case had decided that it did not have to grant citizenship to an alien who is not willing to serve in the armed forces, at least in the capacity of a I-A-O. It had taken the position that an objector unable to do any military service could be denied the privilege of taking the oath of citizenship because it contains the words "defend the Constitution and laws of the United States of America against all enemies."

The Supreme Court has reversed the case, so that Mr. Cohnstaedt can no longer be excluded simply on the ground that he is a conscientious objector.

On February 7, 1950, the argument for Cohnstaedt was presented to the Supreme Court by Osmond Fraenkel of the American Civil Liberties Union.

Mr. Fraenkel's argument was based very largely on Congressional legislation. Congress has authorized that aliens who served in the Army may be naturalized in a much more rapid period of time than an alien who has not so served, except that this special treatment is expressly denied to conscientious objectors. Mr. Fraenkel argued that Congress would not have taken the trouble to exclude conscientious objectors from these special privileges if Congress had been under the impression that no conscientious objector could become a citizen at all.

Mr. Fraenkel also included in his argument material supplied him by NSBRO, printed on page 3 of the December, 1949, *Reporter.* (Previous discussion of the case was also contained in the September 10, 1949, *Reporter.*)

Justice Hugo L. Black undertook to present the religious viewpoint himself in the questions that he addressed to the attorney for the Immigration Service. Justice Black spoke quite warmly in praise of the Society of Friends in both the United States and England.

Fraenkel's presentation was very able. He devoted the greater part of his presentation to the legal aspects of the case, dwelling at not too great length on the religious point-of-view involved. This not only showed a good understanding of courts generally speaking, but proved to be doubly wise in this case because of Justice Black's later remarks.

The Supreme Court's decision was a Per Curiam decision, one rendered without opinion and without naming the vote of the Court.

The basis of the decision was the former case of *Girouard v. U. S.*, 328 U. S. 63, which the Kansas Supreme Court had interpreted to be confined only to I-A-Os. The reversal in effect confirms the impression that the *Girouard* case also includes IV-Es.

The report mentions that there was a dissent by Chief Justice Vinson, Justice Reed, and Justice Clark.

Noteworthy to objectors is the position taken by two new Justices on the Supreme Court bench. Justice Clark, who, when he was Attorney General, was believed to be becoming more sympathetic to objectors, favored the exclusion of Cohnstaedt, while Justice Sherman Minton participated in the reversal.

Also noteworthy is the change of opinion of Justice Frankfurter who was among the dissenters in the *Girouard* case, but who participated in the reversal of the *Cohnstaedt* case.

New Book on CPS History Appears

Service for Peace by Melvin Gingerich. Mennonite Publishing House, Scottdale, Pa., 1949. 508 pages. Price $3.00. Former CPS assignees should order directly from the Mennonite Central Committee, Akron, Pa., to secure special rate available to them.

This history of Mennonite Civilian Public Service gives an authoritative and factual account of events, hopes, plans, and disappointments connected with CPS' origin and operation. It contains a description of each camp and unit, and the work, educational, and religious programs.

What the book lacks of the more individual feelings and experiences that made up CPS, former assignees can supply from their own memory. For them it is an excellent reference work and for anyone else it is a highly valuable and accurate source of information about CPS.

The author, Dr. Melvin Gingerich, is presently director of the Mennonite Research Foundation in Goshen, Indiana.

A Peacemaker Praises the Courts

by WILLIAM E. ROSTRON, JR.

(The Reporter has occasionally printed articles reflecting CO viewpoint towards which NSB maintains a neutral policy. One of these was "The Basis for Jewish Pacifism" in the January 1949 issue. This article is another of that series.)

If a peacemaker were to condemn the courts, it would not be news. It is more unusual for one to praise them. To understand why I extol them, it is necessary to look at law generally.

Some laws are just a group of inflexible bans which are given to the people as orders to be obeyed. However, this is not true of all law. A great deal of law is applicable only when poeple get into disputes with each other.

An example of the first is the Selective Service Act which requires that everyone of a certain age must register. This is required regardless of whether people are disputing with each other or not.

On the other hand, we have a law that says certain kinds of contracts must be in writing. If two men make that kind of contract, and it is not in writing, and they go ahead and perform it without any disagreement, the fact that it is not in writing is in no sense illegal. It is only when the two get into a dispute over what the contract means and take it to a court to be arbitrated that the court will apply the rule that it must be in writing in order to arrive at a settlement.

The ancient law of the Jews was of the first type. The law was to the effect that a man should not eat certain kinds of meat, and should wear certain kinds of garments, should do this or that and should not do the other. And it was binding upon all of the members of the Jewish community whether or not human relations had broken down.

On the other hand, the ancient English common law was of the second variety. In early England when individuals got into disputes with each other, the common method of settlement was with a blood feud: members of the family of the two contestants would fight with each other and continue the fight over long years, sometimes.

The courts were instituted to preserve the peace of England by offering arbitration as an alternative to fighting.

This device was fairly successful. After the courts were instituted, people ceased the practice of resorting to private revenge and followed the practice of going to court and seeking a peaceful settlement.

The courts were a device for arbitrating differences of opinion in much the same way that some conscientious objectors today advocate arbitration of international disputes. And the courts succeeded in doing this and have made a great contribution to the internal peace of the nations of the world. If these same methods could be extended to international affairs, that same peace would be extended as well.

VOL. VII, No. 4 February, 1950

THE REPORTER

published monthly by

national **service** *board*

***for religious* objectors**

941 Mass. Ave., N. W., Washington 1, D. C.

Subscription: Foreign or Domestic, $1.00 per year.

Sec. 34.66, P. L. & R.
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